

REMARKS

In the Office Action, the Examiner repeated the rejections of claims 45-49 under 35 USC § 102 as being anticipated by **Wassenaar** (U.S. Patent No. 7,060,289). The Examiner observed that **Wassenaar** teaches a method of reducing excessive sweating and minimizing side effects by means of an aqueous formulation of glycopyrrolate, an AntiCholinergic Quaternary Amine (ACQA). **Wassenaar** reports improvement in a case study of a patient that had excessive sweating of the forehead and groin which resulted in a facial rash and fungal infection. After treatment with the composition, the fungal infection of the groin had improved as had the facial rash. Applicant points out that the “minimizing side effects” language was directed to the combination of oral glycopyrrolate with topical glycopyrrolate which permits a lower level of the oral therapeutic thereby lessening side effects caused by the oral drug. It would appear that the case studies reported by **Wassenaar** did not involve oral ACQAs.

In any case, a broad reading of the **Wassenaar** invention is a method for controlling excessive sweating and improving facial rashes and fungal infections of the groin associated with excessive sweating. Applicant’s invention is a method of killing bacteria and fungi by means of a topical application of ACQA composition to the skin. Applicant is the first person to appreciate that ACQAs are capable of killing both fungi and bacteria. The claims have now been amended to unambiguously claim such a method. Because **Wassenaar** does not claim the step of killing fungi and bacteria, it cannot be said to anticipate the instant invention. Those of ordinary skill in the art understand that chronic fungal infections are extremely recalcitrant and a treatment that “improves” the symptoms frequently fails to kill the infective organism. Once treatment is stopped, the fungus rebounds.

The Examiner very helpfully discussed the problem of open versus closed transition phrases in claims. Applicant understands that an open transition leaves the claimed method open to the addition of antifungal agents and other active ingredients besides ACQAs. However, simply inserting a closed or nearly closed transition (“consisting of” or “consisting essentially of”) has the unfortunate problem of allowing

others to make use of the invention by simply adding an additional active agent. Therefore, Applicant has amended the claims to require that the ACQA in the composition "alone is able to kill fungi and bacteria." Applicant believes this effectively closes the claim and yields a claim that features Applicant's discovery while allowing more flexibility than a closed construction and yet reading only on combinations where the ACQA is sufficient to kill fungi and bacteria by itself. This also makes it simple to test the product of an alleged infringer. If the alleged infringer is killing fungi and bacteria with a topical combination, and if the concentration of ACQA (if any) in the combination is adequate to kill fungi and bacteria by itself, there is an infringement. The wording of the claim eliminates situations where other components of the composition, such as alcohol, are responsible for the killing of fungi and bacteria.

Applicant believes that the new claim structure avoids the problems pointed out by the Examiner. If, however, the Examiner still finds the claims not to be allowable, Applicant respectfully requests an Interview with the Examiner. Applicant is anxious to schedule an interview with the Examiner, if necessary. It would seem that optimal time for such an Interview would be after the Examiner has taken up the case again but has not issued an Office Action. At that time the Examiner is respectfully requested to call the undersigned attorney at the Los Angeles telephone number (310) 229-9928 to set up an Interview or discuss any steps that will advance prosecution of this case. You are hereby authorized to charge any fees due and refund any surplus fees to our Deposit Account No. 22-0261. Please reference matter number 94902-256172.

Respectfully submitted,

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